

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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**TRISTAR INVESTORS, INC.,**

**Plaintiff,**

**v.**

**AMERICAN TOWER CORPORATION, et  
al.,**

**Defendants.**

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**AMERICAN TOWER, LLC, et al.,**

**Counter-Plaintiffs,**

**v.**

**TRISTAR INVESTORS, INC., DAVID  
IVY, ED WALLANDER, ROBERT GILES,  
DALE GILARDI, JERRY VOGL, JOHN  
LEMMON, MICHAL MACKEY, and  
MATT NEWTON,**

**Counter-Defendants.**

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**CIVIL ACTION NO. 3:12-CV-499-M**

**THE AMERICAN TOWER ENTITIES' OPPOSITION  
TO THE RICO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Counter-Plaintiffs American Tower, LLC, SpectraSite Communications, LLC, and American Towers, LLC, (referred to herein collectively as the “American Tower Entities” or “American Tower”) pursuant to Federal Rule of Civil Procedure 56 and Local Rules 56 and 7, file this Opposition to TriStar Individuals’ Motion for Summary Judgment (RICO Claims) (Doc. # 238) (the “RICO Defendants’ Motion for Summary Judgment”). As set forth in The American Tower Entities’ Brief in Support of Their Opposition to the RICO Defendants’ Motion

for Summary Judgement, filed herewith and incorporated by reference, the RICO Defendants' motion for summary judgment should be denied in its entirety for the following reasons:

### **SUMMARY**

The RICO Defendants' motion for summary judgment and accompanying brief do not contest American Tower's ability to make a submissible case as to the requirements of 18 U.S.C. §§ 1962(c) and (d), including the ability of American Tower to prove the requisite acts of mail and wire fraud. Instead, the RICO Defendants argue that the Court should grant summary judgment in their favor because: (1) the RICO Defendants' use of a legitimate enterprise to conduct their fraudulent scheme makes American Tower's claims fall outside the intended purpose of RICO; (2) American Tower's damages are not "RICO injuries"; and (3) American Tower's damages were not "proximately caused" by the RICO Defendants' racketeering violations.

As fully set forth in American Tower's accompanying brief, each of these three arguments fails. First, both Congress and controlling Supreme Court precedent have made clear that RICO is to be read broadly, liberally construed to effectuate its remedial purposes, and that RICO reaches criminal activity performed by a legitimate enterprise. Second, the injuries alleged by American Tower are recoverable RICO injuries under the law, and any dispute raised by the RICO Defendants regarding these injuries does nothing more than indicate a genuine dispute as to a material fact for trial. Finally, the RICO injuries sustained by American Tower were proximately caused by the RICO Defendants' racketeering violations, which intentionally and directly targeted American Tower, and the evidence adduced by American Tower makes clear there is a genuine issue of material fact appropriate for trial.

Because the RICO Defendants' summary judgment arguments regarding American Tower's § 1962 (d) claim rely solely on their arguments addressed above, their motion as to § 1962 (d) also fails.

The matters required by Local Rule 56.4(a)(2) are set forth in the accompanying American Tower Entities' Brief in Support of Their Opposition to the RICO Defendants' Motion for Summary Judgment.

WHEREFORE, the American Tower Entities respectfully request that this Court deny the TriStar Individuals' Motion for Summary Judgment as to the American Tower Entities' RICO claims, and grant any further and additional relief this Court deems appropriate.

Date: Oct. 24, 2013

Respectfully submitted,

/s/ Jon G. Shepherd

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**CERTIFICATE OF SERVICE**

On October 24, 2013, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Jon G. Shepherd

Jon G. Shepherd